

EIC 2800 SEARCH REPORT



STIC Database Tracking Number: 359337

To: SEUNGSOOK HAM

Location: JEF-8D65

Art Unit: 2817

Tuesday, March 22, 2011

Case Serial Number: 09/987978

From: DIANE JACKSON

Location: EIC2800

JEF-4B68

Phone: (571)272-3260

diane.jackson@uspto.gov

Search Notes

Hi,

Attached are litigation search results in Lexis Nexis, and CourtLink and Q-Pat/Orbit.

No Litigation was found for Serial Number 09/987978 and Patents 5637913 and 5378656.

If you have any questions, please feel free to contact me.

Thanks,

Diane

MAR 2 2 2011

3 59 337

Jackson, Diane

From:

Ham, Seungsook

Sent:

Monday, March 21, 2011 4:11 PM

To:

STIC-EIC2800

Subject:

litigation search for reissue application: 09/987978 (USP 5637913)

Could you do a litigation search for above reissue application and send me a copy?

Thanks, Seungsook(Robyn) Ham U.S. Patent & Tradmark Office TC 2800 TQAS (detailee) Jeff. bldg. 8D65 571-272-2405

5,637,913 5,378,656

Application Number Information

Application Number: 09/987978 Assignments

Filing or 371(c) Date: 11/16/2001 eDan

Effective Date: 11/16/2001 Application Received: 11/16/2001

Patent Number:

Issue Date: 00/00/0000 Date of Abandonment: 00/00/0000 Attorney Docket Number: 1374.32049RV1 Examiner Number: 72333 / CLARK, JASMINE

Group Art Unit: 2815

Class/Subclass: 257/666.000

Lost Case: NO Interference Number: Unmatched Petition: NO L&R Code: Secrecy Code:1

Third Level Review: NO

Secrecy Order: NO

IFW Madras

Status: 71 /RESPONSE TO NON-FINAL OFFICE ACTION ENTERED AND FORWARDED TO EXAMINER

Status Date: 02/01/2011

Confirmation Number: 7905

Oral Hearing: NO

Title of Invention: LEADFRAME SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME, AND METHOD OF AND PROCESS FOR FABRICATING

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http://EXPOWEB1:8001/cgi-bin/expo/GenInfo/snquery.pl?APPL_ID=09987978

3/22/2011

Continuity/Reexam Information for 09/987978

Parent Data <u>09987978</u>, filed 11/16/2001 is a reissue of <u>08311021</u>, filed 09/22/1994 ,now U.S. Patent #5637913 and having <u>1 RCE-type filing</u> therein <u>08311021</u> is a division of <u>08038684</u>, filed 03/29/1993 ,now U.S. Patent #5378656 claims foreign priority to 4-320098, filed 11/30/1992 claims foreign priority to 4-071116, filed 03/27/1992

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Bar Code # Search

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Application Number Information

Application Number: 08/311021 Assignments

Filing or 371(c) Date: 09/22/1994 eDan

Effective Date: 09/22/1994 Application Received: 09/22/1994 Patent Number: 5637913

Issue Date: 06/10/1997 Date of Abandonment: 00/00/0000 Attorney Docket Number: 501.32049VX

Status: 150 /PATENTED CASE

Confirmation Number: 8059

Examiner Number: 72333 / CLARK, JASMINE

Group Art Unit: 2503 Class/Subclass: 257/666.000

Lost Case: NO Interference Number: Unmatched Petition: NO L&R Code: Secrecy Code:1 Third Level Review: NO

Secrecy Order: NO Status Date: 05/30/1997

Oral Hearing: NO

Title of Invention: LEADFRAME SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME AND METHOD OF AND PROCESS FOR FABRICATING THE

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Attorney Docket #

Bar Code #

Application Number Information

Application Number: 08/038684 Assignments

Filing or 371(c) Date: 03/29/1993 <u>eDan</u>

Effective Date: 03/29/1993 Application Received: 03/29/1993

Patent Number: <u>5378656</u> Issue Date: 01/03/1995

Date of Abandonment: 00/00/0000 Attorney Docket Number: 501-32049X00

Status: 150 /PATENTED CASE Confirmation Number: 9581 Examiner Number: 69603 / PICARDAT, KEVIN

Group Art Unit: 1104 Class/Subclass: 999/217.000

Lost Case: NO
Interference Number:
Unmatched Petition: NO
L&R Code: Secrecy Code:1
Third Level Review: NO

Secrecy Order: NO Status Date: 06/16/1995

Oral Hearing: NO

Title of Invention: LEADFRAME, SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME, AND METHOD OF AND PROCESS FOR FABRICATING

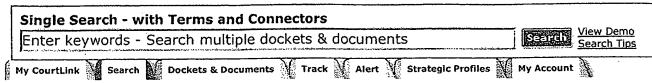
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Search > Patent Search > Searching

Patent Search 5637913 3/22/2011

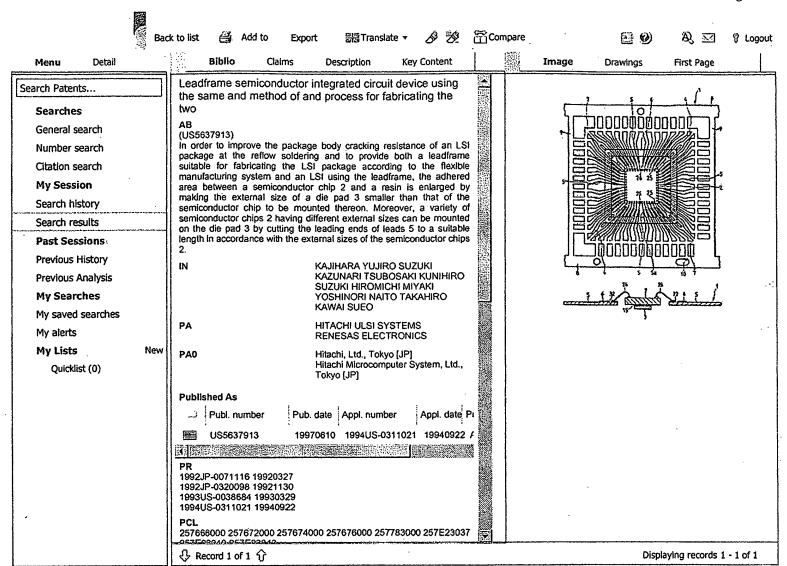
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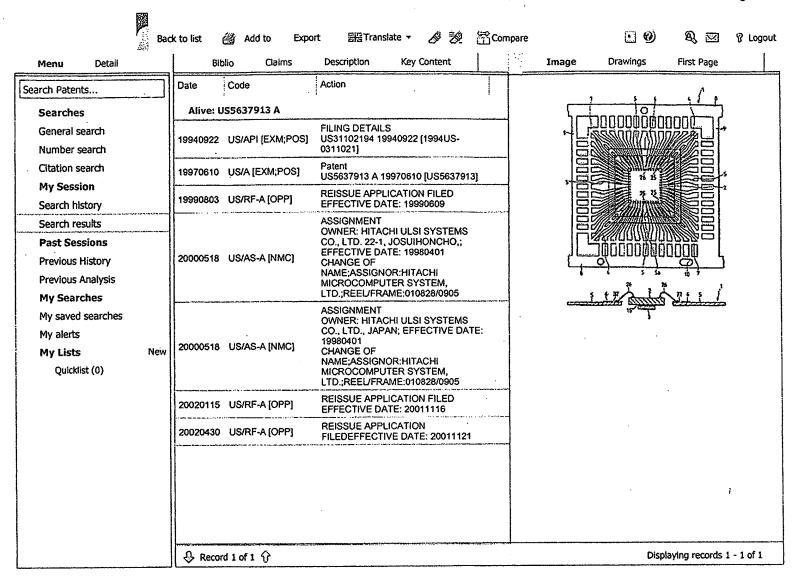


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TITLE 39. POSTAL SERVICE	
TITLE 40. PUBLIC BUILDINGS, PROPERTY, AND WORKS	

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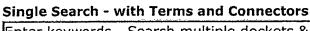
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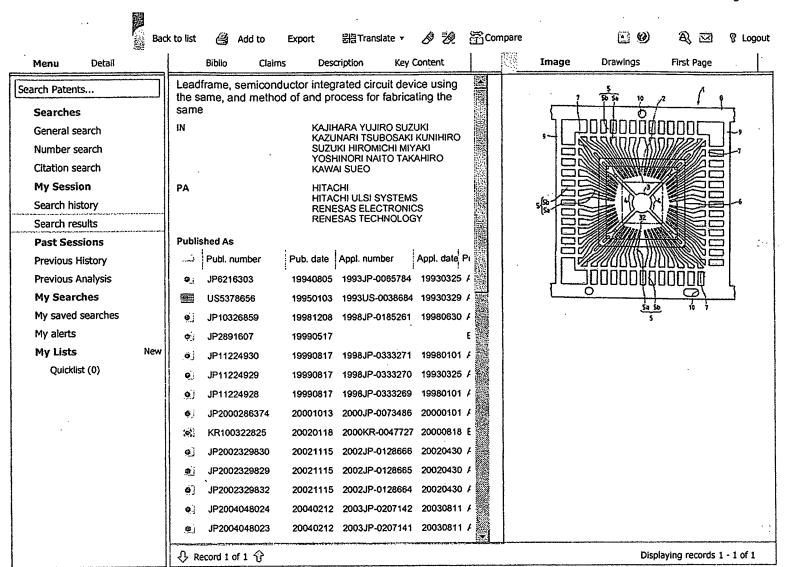
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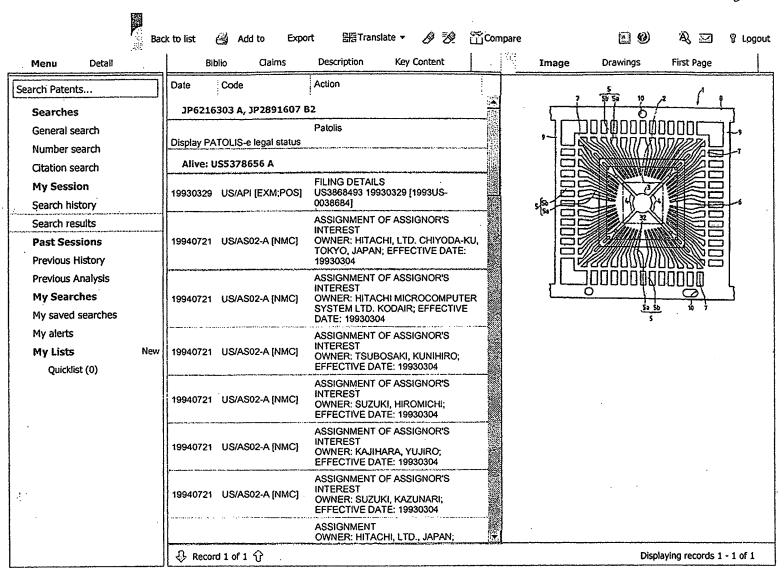


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038684 (08) 5378656 January 3, 1995

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

5378656

Access PDF of Official Patent * Order Patent File History / Wrapper from REEDFAX® Link to Claims Section

January 3, 1995

Leadframe, semiconductor integrated circuit device using the same, and method of and process for fabricating the same

INVENTOR: Kajihara, Yujiro - Tachikawa, Japan (JP); Suzuki, Kazunari - Tokyo, Japan (JP); Tsubosaki, Kunihiro - Hino, Japan (JP); Suzuki, Hiromichi - Machida, Japan (JP); Miyaki, Yoshinori - Kokubunji, Japan (JP); Naito, Takahiro - Koganei, Japan (JP); Kawai, Sueo - Iwama, Japan (JP)

APPL-NO: 038684 (08)

FILED-DATE: March 29, 1993

GRANTED-DATE: January 3, 1995

PRIORITY: March 27, 1992 - 04071116, Japan (JP); November 30, 1992 - 04320098, Japan (JP)

ASSIGNEE-PRE-ISSUE:

July 21, 1994 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., HITACHI, LTD. CHIYODA-KU, TOKYO, JAPAN, HITACHI MICROCOMPUTER SYSTEM LTD. KODAIRA-SHI, TOKYO, JAPAN, CHIYODA-KU, TOKYO, JAPAN (), Reel and Frame Number: 007070/0577

ASSIGNEE-AT-ISSUE:

Hitachi, Ltd., Tokyo, Japan (JP) Hitachi Microcomputer System Ltd., Ibaraki, Japan (JP)

ASSIGNEE-AFTER-ISSUE:

May 26, 2000 - CHANGE OF NAME (SEE DOCUMENT FOR DETAILS)., HITACHI ULSI SYSTEMS CO., LTD. 22-1, JOSUIHONCHO, 5-CHOME, KODAIRA-SHITOKYO, (1), Reel and Frame Number: 010804/0789 March 30, 2010 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., RENESAS TECHNOLOGY CORP., 6-2, OTEMACHI 2-CHOME, CHIYODA-KU, TOKYO, JAPAN (), Reel and Frame Number: 024160/0452

July 30, 2010 - MERGER (SEE DOCUMENT FOR DETAILS)., RENESAS ELECTRONICS CORPORATION, KAWASAKI, 1753 SHIMONUMABE, NAKAHARA-KU, KANAGAWA, JAPAN (), Reel and Frame Number: 025204/0512

LEGAL-REP: antonelli, Terry, Stout &; Kraus

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19 Cl. Ct. 561, *; 1990 U.S. Cl. Ct. LEXIS 41, **; 36 Cont. Cas. Fed. (CCH) P75,811

BEAN DREDGING CORPORATION and Weeks Marine, Inc., Plaintiffs v. The UNITED STATES, Defendant

No. 604-89C

UNITED STATES CLAIMS COURT

19 Cl. Ct. 561; 1990 U.S. Cl. Ct. LEXIS 41; 36 Cont. Cas. Fed. (CCH) P75,811

February 14, 1990

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff joint venturers sought to enjoin defendant, the United States Army Corps of Engineers, from cancelling a bid invitation for river and harbor improvement contracts, which the corps planned to do pursuant to 33 U.S.C.S. § 624 due to the fact that all the bids received were 25 percent higher than the corps estimates of the dredging project.

OVERVIEW: The joint venturers claimed that the corps violated the Fed. Acquisition Reg. § 14.404-1, specifically codified at 48 C.F.R. § 14.404-1, by not awarding a contract to the lowest responsible bidder without a compelling reason to do so and the evidence showed that the corps estimate was unreasonably low due to calculation errors that violated of 48 C.F.R. § 14.404-1(c)(6); and the corps breached the implied-in-fact contract provision contained in all government solicitations to consider bids in a fair and reasonable manner. The court granted the joint venturers their requested injunctive relief and held that based on the evidence presented and the calculations provided by the corps that the corps had miscalculated the costs involved in the dredging project and once the calculations were corrected that the bid made by the joint venturers was within 25 percent of the corrected cost estimate and in compliance with 33 U.S.C.S. § 624, 48 C.F.R. § 14.404-1. The court further held that the corps had failed to prepare a fair and reasonable cost estimate for the project; violated its implied-in-fact obligation to treat all fully, fairly, and honestly; and therefore could not cancel the bid.

OUTCOME: The court granted the injunctive relief requested by the joint venturers and enjoined the corps and all persons acting in concert with the corps from awarding a contract or disbursing funds to anyone other than the joint venturers for the dredging project.

CORE TERMS: monthly, dredging, estimate, bid, dredge, plant, estimated, mud, pipeline, corrected, mobilization, mandatory, calculation, demobilization, overhead, booster, awardable, ownership, proven, depreciation, reasonable estimate, adjusted, revised, river, channel, fuel, formula, submerged, mathematical errors, engineer

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Administrative Law > Sovereign Immunity

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > Exclusive Jurisdiction

Civil Procedure > Judgments > Relief From Judgment > Independent Actions

HN1 128 U.S.C.S. § 1491(a)(3) provides that to afford complete relief on any contract claim brought before the contract is awarded, the claims court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. More Like This Headnote

Public Contracts Law > Costs & Prices > Price Analysis

Public Contracts Law > Terminations > Enforcement of Promises

HN2 ≥ 33 U.S.C.S. § 624 prohibits the award of river and harbor improvement contracts when all bids exceed the estimate of the United States by more than 25 percent. More Like This Headnote | Shepardize: Restrict By Headnote

Public Contracts Law > Bids & Formation > Offer & Acceptance > General Overview

Public Contracts Law > Dispute Resolution > Bid Protests

Public Contracts Law > Governmental Immunities > Statutory Restrictions

HN3 ★ Fed. Acquisition Reg. § 14.404-1(a)(1), specifically codified at 48 C.F.R. § 14.404-1, states in part that preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. More Like This Headnote | Shepardize: Restrict By Headnote

Public Contracts Law > Types of Contracts > Construction Contracts

Transportation Law > Water Transportation > Waterways

HN4 ± USACE Eng'g Reg. No. ER 1110-2-1300 provides the estimator with general data, procedures, average values, and a format for guidance in preparing government estimates for dredging. More Like This Headnote

Public Contracts Law > Costs & Prices > Cost Principles

Public Contracts Law > Types of Contracts > Construction Contracts

Transportation Law > Water Transportation > Waterways

HN5±USACE Eng'g Pamp. No. EP 1110-1-8 establishes predetermined equipment ownership and operating expense rates for use in preparation of estimates for bidding. More Like This Headnote

Public Contracts Law > Costs & Prices > Cost Principles

Public Contracts Law > Types of Contracts > Construction Contracts

Transportation Law > Water Transportation > Waterways

HN6 33 U.S.C.S. § 624 sets limits on improvement work by private contract and states in part that (a) determinations respecting comparison of private contract price with estimation of cost of performance of work by a United States plant or by well-equipped contractor, no works of river and harbor improvement shall be done by private contract (2) in any other circumstance where the United States Secretary of the Army, acting through the United States Chief of Engineers,

determines that the contract price is more than 25 per centum in excess of what the secretary determines to be a fair and reasonable estimated cost of a well-equipped contractor doing the work and limits (c) considerations involved in determinations of estimation of cost of performance of work by well-equipped contractor. More Like This Headnote | Shepardize: Restrict By Headnote

Public Contracts Law > Costs & Prices > Cost Principles 📆

Public Contracts Law > Types of Contracts > Construction Contracts

Transportation Law > Water Transportation > Waterways 坑

HN7★In determining a fair and reasonable estimated cost of doing work by private contract under 33 U.S.C.S. § 624(a)(2), the United States Secretary of the Army, acting through the United States Chief of Engineers, shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all expenses for supervision, overhead, workmen's compensation, general liability insurance, all taxes, interest on capital invested in plant, and such other expenses and charges the secretary, acting through the chief of engineers, determines to be appropriate. More Like This Headnote

Administrative Law > Sovereign Immunity

Governments > Courts > Courts of Claims

Public Contracts Law > Dispute Resolution > Jurisdiction

HN8 The equitable jurisdiction of the claims court under 28 U.S.C.S. § 1491(a)(3) is subject to substantial limitations and the claims court must exercise great caution and should not substitute its judgment for that of an agency. Judicial intrusion into the procurement pre-award agency decision is generally limited in scope, circumspect, and infrequent. The claims court should intervene only when it is clearly determined and proven that the agency's determination is irrational or unreasonable or where the decision was made in clear and prejudicial violation of applicable statutes or regulations. More Like This Headnote

Business & Corporate Law > Agency Relationships > Causes of Action & Remedies > Breach of Contract

Contracts Law > Contract Interpretation > Good Faith & Fair Dealing 📆

Contracts Law > Remedies > Equitable Relief > Injunctive Relief

HN9 A disappointed bidder may obtain injunctive relief for an alleged agency breach of the implied-infact contract obligation to treat each and every bid in a full, fair, and honest manner in one of two ways. The bidder must show either (1) that the agency's decisionmaking process lacked a rational or reasonable basis, or (2) that the procurement procedure involved a clear and prejudicial violation of applicable statutes or regulations. Proof in either of these two circumstances must be established by clear and convincing evidence, which must overcome the strong presumption that government officials will perform their official duties properly and in good faith. The level of proof required to overcome this presumption is "well-nigh irrefragable," a burden which is not sustained by speculation. More Like This Headnote | Shepardize: Restrict By Headnote

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review

Evidence > Inferences & Presumptions > General Overview

Public Contracts Law > Dispute Resolution > Jurisdiction

HN10 & Allegations of irrational or unreasonable decisionmaking by the agency are judged against what amounts to arbitrary and capricious conduct. More Like This Headnote

Administrative Law > Judicial Review > Standards of Review > Clearly Erroneous Review

Evidence > Inferences & Presumptions > General Overview

Public Contracts Law > Dispute Resolution > Jurisdiction

HN11+ Allegations of clear and prejudicial statutory and regulatory violations by an agency regarding a bidding process must be supported by the requisite clear and convincing evidence showing that the violation breached the implied-in-fact contract of full and impartial consideration. More Like This Headnote

Evidence > Inferences & Presumptions > General Overview 📆

Public Contracts Law > Dispute Resolution > Bid Protests

HN12+ The implied contract of full, fair, and honest consideration is the sole basis for jurisdiction in preaward bid protest cases. A violation of applicable statutes or regulations is but one of two methods to prove that the implied-in-fact contract is breached. More Like This Headnote | Shepardize: Restrict By Headnote

Civil Procedure > Remedies > Injunctions > Permanent Injunctions

Contracts Law > Breach > General Overview

Contracts Law > Remedies > Equitable Relief > Injunctive Relief

HN13* A proven violation of a statute or regulation does not in a bidding process, ipso facto, provide an automatic basis for injunctive relief. Only those statutory or regulatory violations which breach the implied contract of fair consideration are grounds for injunctive relief. More Like This Headnote | Shepardize: Restrict By Headnote

Environmental Law > Water Quality > Clean Water Act > Discharge Permits > Dredged or Fill Material > General Overview 🖼



Public Contracts Law > Costs & Prices > Cost Principles 🚮

Transportation Law > Water Transportation > Waterways 📶

HN14 USACE Eng'g Reg. No. ER 1110-2-1300 para. B-9(5) requires the United States Army Corps of Engineers to include crew labor costs in the monthly dredge plant cost estimate. It does not, however, specify the number of crew, neither minimum, maximum, nor otherwise. The No. ER 1110-2-1300 para. B-9(5) emphasizes that the size of the crew will vary with dredge size and job conditions. More Like This Headnote

Public Contracts Law > Costs & Prices > Cost Principles

Transportation Law > Water Transportation > Waterways 📶

HN15 USACE Eng'g Reg. No. ER 1110-2-1300 para. B-4(d)(6)(b) addresses the subject of effective monthly dredging time and states in part that the number of operating days per month is less than 30 due to holidays, inclement weather, repairs, relocations, disposal constraints, and less than seven days per week of operation. The number of operating days normally averages between 20 and 26 based on seven days operation per week. The rationale for these times estimates should be part of the estimate of the United States and No. ER 1110-2-1300 para. B-4 (d)(6)(b) does not dictate to the United States Army Corps of Engineers to use any specified or aggregate number of effective working days to constitute a dredge month, but it clearly envisions the use of between 20 and 26 days under normal circumstances. More Like This Headnote

Evidence > Inferences & Presumptions > General Overview

Evidence > Procedural Considerations > Objections & Offers of Proof > General Overview

HN16+ The failure to produce evidence, which would allegedly support the assertions of that party, warrants an adverse inference in the absence of an adequate explanation for its omission. More Like This Headnote | Shepardize: Restrict By Headnote

Civil Procedure > Remedies > Injunctions > Permanent Injunctions

Contracts Law > Remedies > Equitable Relief > Injunctive Relief

Evidence > Inferences & Presumptions > General Overview

HN17 Before granting permanent injunctive relief in those cases where a plaintiff proves the breach of the implied contract, a claims court must also consider (i) whether an injunction is within the public's interest; (ii) whether the plaintiff will suffer irreparable harm, including an inadequate remedy at law, if the injunction is not granted; and (iii) the extent of injury to the defendant if the injunction is granted or where the balance of hardships lies. More Like This Headnote

COUNSEL: [**1] Peter M. Kilcullen, Washington, District of Columbia, attorney of record for Plaintiffs.

Shalom Brilliant, Washington, District of Columbia, with whom was Assistant Attorney General Stuart M. Gerson, for Defendant.

JUDGES: Gibson, Judge.

OPINION BY: GIBSON

OPINION

[*561] GIBSON, Judge:

This is a pre-award bid protest case seeking injunctive relief under 28 U.S.C. § 1491(a)(3) (West Supp. 1989). 1 Plaintiffs Bean Dredging Corporation and Weeks Marine, Inc. - (hereinafter Bean, Weeks, or plaintiffs) are joint venturers who seek to enjoin the United States Army Corps of Engineers (Corps or defendant) from cancelling an invitation for bids, which contemplates the performance of maintenance [*562] dredging 2 on the Mobile River in Mobile, Alabama. The Corps has proposed to cancel the invitation pursuant to the authority of 33 U.S.C. § 624 (West Supp. 1989), which prohibits the award of river and harbor improvement contracts when every bid received by the Corps is more than 25% higher than the government's estimate for performance of that same work. Plaintiffs, the lowest responsive and responsible bidders on subject project, challenge the defendant's authority to cancel the invitation. Specifically, they contend that the Corps did not prepare [**2] a fair and reasonable cost estimate of a well-equipped contractor doing the work, as required by 33 U.S.C. § 624 and applicable regulations. Moreover, plaintiffs aver that this failure constitutes a violation of the implied-in-fact contractual obligation requiring the defendant to consider and treat all bids fairly.

FOOTNOTES

1 Jurisdiction is premised on HN1 \$\frac{7}{2}8 U.S.C. § 1491(a)(3), which provides as follows:

To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief

2 Maintenance dredging is the process by which materials that have accumulated in a previously dredged channel are removed to maintain the desired channel width and depth. This is to be distinguished from original dredging, which is the process of creating a new channel through the removal of virgin materials.

Plaintiffs' motion for a temporary restraining order was denied as moot. Their motions for preliminary and permanent injunctive relief were thereafter consolidated, and a hearing was held on the [**3] merits for a permanent injunction from November 29, 1989 to December 5, 1989. For the reasons stated hereinafter, we grant plaintiffs' consolidated motion for injunctive relief.

Facts

The Corps' Mobile District Office issued Invitation for Bids (IFB) No. DACW01-89-B-0076 on July 27, 1989. The IFB solicited bids for maintenance dredging on the Mobile River ship channel in Mobile, Alabama. The work was to be performed on that portion of the river between Station 0 + 00 - tangent 1 and Station 31 + 60 tangent 5; a dredging channel of approximately 24,000 to 25,000 feet in length and 500 to 1,000 feet in width. The IFB required "the removal of the material lying above the channel bottom elevations (below mean low water) and over the channel bottom widths and lengths as specified on the contract drawings," PX 3, p. 2A-1. This requirement contemplated the removal of all shoal 3 material within a box-cut prism. Thus, offerors were required to bid the project according to the materials within the prism, described as a depth of -42.0 feet below mean low water and the channel width prescribed by contract drawings referenced in the IFB. The quantity of materials to be removed [**4] was not advertised by the Corps. Bidders were, therefore, required to make this determination for themselves on the basis of IFB drawings coupled with three channel surveys included with the IFB. These three surveys, taken in November 1988, May 1989, and August 1989, provided all bidders with various channel cross-sections which indicated the distribution of the shoal material to be removed from the box-cut template.

FOOTNOTES

3 The shoal is that material deposited in the channel over time. In this case, it is comprised primarily of mud and silt traveling down the Mobile River, and deposited in Mobile Bay. It also includes any material deposited in the channel as a result of tidewater effects.

The materials dredged were to be deposited in two disposal areas. The quantity of the materials to be placed in the first disposal area, known as Mud Lakes 6/7, was restricted to 1,000,000 gross cubic yards. The remainder of the dredged materials was to be deposited in the second disposal area, known as Gaillard Island, which was approximately 14 miles beyond the mid-point of the Mobile River work site. The fact of the foregoing distance to Gaillard Island as a disposal site necessarily [**5] contemplated the use of dredging pipeline with an average length of 72,000 feet. This requirement unquestionably made the project unconventional in that it required substantial amounts of submersible pipeline. This is so for the additional fact that the pipeline length was more than the Corps had used on any of five previous contracts in the Mobile River, PX 8.

Under the terms of the IFB, bidders were required to submit fixed, lump-sum prices for four line bid items. The four required components of each bid included:

[*563] Bid Item

- # 1 -- Mobilization and Demobilization;
- # 2 -- Mobile River Dredging;
- # 3 -- Dike Construction and General Rehabilitation for both the Mud Lakes 6/7 and Gaillard Island Disposal Areas; and
- # 4 -- Operation and Maintenance Costs Associated with the Mud Lakes 6/7 and Gaillard Island Disposal Areas.

The Corps, as required, prepared a project contract estimate by which it sought to judge all bids received pursuant to the solicitation. That estimate was prepared by Mr. Paul Warren, Area Engineer for the Mobile District. As Area Engineer, Mr. Warren is responsible for monitoring the condition of federal navigational channels in the Mobile [**6] District, drafting contract specifications for dredging projects, estimating the cost of dredging projects in the District, and execution of those projects. Mr. Warren, a civil engineer registered in the State of Alabama and employed with the Corps since 1974, estimated the cost of the project in issue on four separate occasions. See Appendix E. Each such estimate was prepared on a cost basis, without reference to profit. Additionally, the first two estimates, prepared prior to this litigation, were noted approved by Mr. James R. Couey, Engineering Division Chief. Said estimates were as follows: 4

[**7]	The Corps' Estimates						
Item	Original Estimate	Revised Before Trial	Revised at Trial	Best & Final			
1 Mob & Demob	\$ 437,698	\$ 3,222,625	\$ 3,426,031	\$ 3,424,945			
2 Dredging Mobile River	5,392,002	4,256,841	4,256,841	4,267,006			
3 D/A Activities Dike	84,036	84,036	84,036	84,036			
4 D/A Activities Operations	146,760	146,760	146,760	146,760			
	\$ 6,060,496	\$ 7,710,262	\$ 7,913,668	\$ 7,922,747			

The Best and Final Estimate (B&FE), DX 7, was increased by the Corps over the Original Estimate by the amount of \$1,862,252 (\$7,922,747 - \$6,060,495) or by 30.72%. The circumstances regarding the preparation of each are discussed seriatim, along with its impact on the award process.

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FOOTNOTES

4 The "Original Estimate" was for \$ 6,060,496.01 and is contained in PX 7, p. 1. It was later superseded by a "Revised Estimate," PX 7, p. 21, in the amount of \$ 7,710,262.06. The "Revised Estimate," by correcting an error in addition for mobilization and demobilization, was modified at trial to \$ 7,913,668. Tr. 480-481. Finally, Mr. Warren prepared a "Best and Final" Estimate in the amount of \$ 7,922,747.17, DX 7, which was not introduced until the third day of trial. Through all of these revisions, only bid items # 1 and # 2 were modified. Each of the four government estimates are set forth *in detail*, on Appendix E.

Plaintiffs, a joint venture in which Weeks was to provide the financial assistance and Bean was to furnish the labor and equipment, submitted an \$ 11,246,000 fixed lump-sum bid on the Mobile River dredging project. It estimated that the following costs would be incurred for each of the four bid items:

Item	Amount
(1) Mobilization/Demobilization	\$ 3,700,000
(2) Dredging Mobile River	7,416,000
(3) D/A Dike Construction	100,000
(4) D/A Operation and Maintenance	30,000
Total Bid	\$ 11,246,000.

[**8] Their bid was prepared by Mr. Ancil Taylor, the holder of a bachelor of science degree in construction engineering and plaintiff Bean's Manager of Engineering and Estimating. Mr. Taylor has been employed in this capacity for 10 years and is responsible for bidding, analyzing equipment production capabilities, and implementing any dredging methods that would enhance productivity. Mr. Taylor is not, however, a licensed engineer, nor is there evidence of any graduate degrees or study in the engineering field.

[*564] The Corps opened bids on September 28, 1989, and received four responsive offers. All were judged and compared with the \$ 6,060,496.01 Original Estimate, the only Corps' estimate in existence at that time. It was concluded by the Corps that the lowest bid had been submitted by plaintiffs. 5 However, citing HN2 33 U.S.C. § 624, see note 14, infra, which prohibits the award of river and harbor improvement contracts when

all bids exceed the government's estimate by *more than 25%*, the Corps refused to award the contract. More specifically, plaintiffs' \$ 11,246,00 bid was far more than 25% greater than the \$ 6,060,496.01 the Corps estimated would be required to accomplish **[**9]** the work. Under its \$ 6,060,496.01 Original Estimate, assuming, of course, it complied with 33 U.S.C. § 624, the Corps could not have made an award on any bid higher than \$ 7,575,620. ⁶

FOOTNOTES

5 The other bids were as follows: \$ 11,365,000 by T. L. James and Co.; \$ 12,000,000 by Great Lakes, Inc.; and \$ 18,000,000 by Mike Hooks, PX 4.

6 An awardable bid equals no more than the government's fair and reasonable estimate multiplied by 1.25 (awardable bid = government estimate \times 1.25). Thus, \$ 7,575,620 = \$ 6,060,496 \times 1.25, see 33 U.S.C. § 624.

Bean, on behalf of the joint venture, protested the reasonableness of the government's estimate by a fax transmittal to the Corps on September 29, 1989, PX 5. Said protest requested a review of the Corps' Original Estimate prior to any further action by the Corps, which was done. As a consequence, the Corps made a reconsideration of its estimate, by making some minor changes which did not significantly alter the estimate sufficiently to create an awardable bid, PX 7, p. 40. Subsequently, the Corps informed plaintiffs by telephone that it intended to deny the protest, but offered to further consider any submissions that might influence [**10] the contracting officer's decision. In response, plaintiffs submitted an extensive written analysis of the project costs which they deemed to be fair and reasonable, dated October 10, 1989. They attempted to substantiate the alleged reasonableness of their \$ 11,246,000 bid and also sought to demonstrate deficiencies in the government estimate, PX 6. This submission led to a meeting on October 11, 1989, in which Bean, again on behalf of the joint venture, was allowed to make a verbal presentation of plaintiffs' case, PX 6. The Corps analyzed plaintiffs' submission as supplemented and determined that some changes were appropriate. It (the Corps) thereafter prepared a Revised Estimate of \$ 7,710,262, PX 7, p. 21.

The Revised Estimate, while not creating an awardable contract, ⁷ led the Corps to conclude that a negotiated procurement was possible. Consequently, the Corps decided to convert the IFB to a request for proposals (RFP) to enable the Corps to negotiate with any and all of the original four bidders to produce an awardable contract. When informed of this decision, plaintiffs requested another audience with the Corps. Two meetings were held on October 20, 1989, in which [**11] plaintiffs' vigorously contested the Corps' plan to cancel the IFB, PX 7, p. 41. Plaintiffs and the Corps were unable to reach an agreement, whereupon plaintiffs filed suit in this court to enjoin cancellation of the IFB on November 7, 1989. Said suit contends that plaintiffs' bid was not treated fairly, as required, in that the Corps' estimate was determined in violation of 33 U.S.C. § 624.

FOOTNOTES

7 Notwithstanding the revised estimate, the Corps could not have made an award on any bid higher than $$9,637,828 ($7,710,262 Corps' Revised Estimate <math>\times 1.25$).

At trial, and in their efforts to establish that the Corps' estimate was not determined in a fair and reasonable manner, plaintiffs relied exclusively upon the testimony of their estimator, Mr. Taylor. ⁸ The Corps relied almost entirely upon the testimony of its estimator, Mr. Warren. ⁹ Upon [*565] direct examination, Mr. Warren conceded that the Corps' Revised Estimate, PX 7, p. 21, contained mathematical errors. Consequently, Mr. Warren corrected the Revised Estimate at trial from \$ 7,710,262 to \$ 7,913,668.06 -- an increase of \$ 203,406. ¹⁰ On the third day of trial, the Corps introduced its \$ 7,922,747 B&FE, DX 7, through Mr. [**12] Warren, on direct examination. That B&FE, apparently, was prepared over a three-day break in trial after plaintiffs had presented all of their evidence. The B&FE, DX 7, superseded the Corps' corrected Revised Estimate, and totalled \$ 7,922,747.17. ¹¹ Notwithstanding this submission, the Corps' B&FE did not produce a § 624 awardable contract. ¹² Given the fact that the Corps has modified its \$ 6,060,496.01 Original Estimate, PX 7, p. 1, three times with a Revised Estimate of \$ 7,710,262.00, PX 7, p. 21, a Revised Estimate corrected at trial of \$ 7,913,688.06, Tr. 480-481, and the B&FE of \$ 7,922,747.17, DX 7, the effect of the foregoing is a judicial admission by the Corps that its *Original Estimate* was unfair and unreasonable at the very minimum by \$ 1,862,251.16 (\$ 7,922,747.17 - \$ 6,060,496.01). To establish an awardable contract, plaintiffs now are

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15. PROMAC v. WEST, 1999 U.S. Fed. Cir. Briefs 1075, 1999 U.S. Fed. Cir. Briefs LEXIS 14 (Fed. Cir. May 6, 1999)

MOTIONS (3 Citing Motions)

- 16. ACADEMY FACILITIES MGMT. v. UNITED STATES, 2009 Fed. Cl. Ct. Motions 302, 2009 Fed. Cl. Ct. Motions LEXIS 69 (Fed. Cl. June 19, 2009)
- 17. Savantage Fin. Servs. v. United States, 2008 Fed. Cl. Ct. Motions 706669, 2009 Fed. Cl. Ct. Motions LEXIS 94 (Fed. Cl. Feb. 27, 2009)

18. TIP TOP CONSTR., INC. v. UNITED STATES, 2008 Fed. Cl. Ct. Motions 352, 2008 Fed. Cl. Ct. Motions LEXIS 15 (Fed. Cl. June 17, 2008)

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